71-903

Supreme Court, U.S.
FILED
JAN 13 1972
E. ROBERT SEAVER, CLERK

In The

SUPREME COURT OF THE UNITED STATES

FLOYD JONES . . . . . *Petitioner*

vs.

BOARD OF EDUCATION OF
DAVIESS COUNTY, KENTUCKY . *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES OF AMERICA

WILLIAM L. WIESMAN
422 Frederica Street
Owensboro, Kentucky 42301
Attorney for Petitioner

UNIGRAPHIC, INC., 4400 JACKSON AVE., EVANSVILLE, IND., PHONE 476-7782

INDEX

CONSTITUTIONAL PROVISIONS 2
STATEMENT OF CASE 3
ARGUMENT 4
CONCLUSION 6

FEDERAL CONSTITUTIONAL PROVISIONS

Amendment IV 2
Amendment VIII 2
Amendment XIII 2
Amendment XIV 3

UNITED STATES STATUTES

Title 29 U.S.C. 1257 2

FEDERAL DECISIONS

Board of Trustees of Arkansas A & M College, et al v. H. Brent Davis, 393 U.S. 962;89; Supreme Court 401; Facts and opinions cited in 270 F. Supp. 528; 396 F.2d 730 5
KRS 159.010 4
KRS 150.180 4
Rodriguez v. Swank, 318 F. Supp. 289 5
Kerr v. Raney, 305 F. Supp. 1152 5

APPENDIX INDEX 7

In The

SUPREME COURT OF THE UNITED STATES

FLOYD JONES ..... *Petitioner*

vs.

BOARD OF EDUCATION OF
DAVIESS COUNTY, KENTUCKY ..... *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES OF AMERICA

To The Honorable Warren Burger, Chief Justice
Supreme Court of The United States of America:

The Petitioner, Floyd Jones, presents this, his Petition for Writ of Certiorari and states:

That this Petition for Review is from the Kentucky Court of Appeals and is officially reported at 470 SW 2d 829; the Judgement appealed from is dated November 7, 1969, entered by the Daviess Circuit Court and was appealed. The original opinion was entered by the Kentucky Court of Appeals on May 28, 1971. A Petition for re-hearing was denied October 15, 1971.

The Petitioner further states that his Petition to the Supreme Court of the United States is based upon

the statutory provisions of Title 29 USC § 1257 and Amendments 4, 8, 13, and 14 of the United States Constitution.

The question presented for review is whether the Board of Education of Daviess County, Kentucky is immune from suit for damages under the Doctrine of Sovereign Immunity where they caused the incarceration of Floyd Jones under a State statute which provided only for a maximum penalty of a $10.00 fine.

The Constitutional provisions involved in this case are as follows:

CONSTITUTION OF THE UNITED STATES OF AMERICA

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT XIII

Section I

Neither slavery nor involuntary servitude, except in a punishment crime whereof the party shall have been

duly convicted, shall exist within the United States or any place subject to their jurisdiction.

AMENDMENT XIV.

Section I

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

The Petitioner pleads facts in his original Complaint that he was illegally incarcerated. The Respondent, in its Motion to Dismiss, pleads Sovereign Immunity and the Constitutional questions were raised in oral argument as no reply is required to a Motion to Dismiss. The trial Court ruled "Defendants Motion to Dismiss for failure to state a claim upon which relief can be granted is sustained, to which the Plaintiff objects." See Appendix II) The Constitutional issues were raised by the Petitioner in his Brief to the Kentucky Court of Appeals (Brief for Appellant Court of Appeals of Kentucky, Page 3). "In this case the Court is squarely faced with the proposition of Sovereign Immunity vs. the State and Federal Constitutional Guarantees and Inalienable rights of persons to be secure from illegal imprisonment." (See Appendix IV)

STATEMENT OF CASE

(e) Floyd Jones was the father of two children, Alex

Jones, age 6 and Jeff Richard Jones, age 8. He attempted to register these children in the Philpot Elementary School and was refused registration. He was instructed to place his children in the Whitesville Elementary School to which the Plaintiff was conscientiously opposed. Jones was aware of the *Kentucky Statute KRS 159.010* requiring children to attend school and a further section of that statute *KRS 159-180* which required "Before any proceedings are instituted against a parent*****a written notice of violation shall be served upon the person by the Director of Pupil Personnel****" he was further aware that the penalty for violation of this Statute was a $10.00 fine for the first offense, and not more than $20.00 for each subsequent offense. On September 23, 1969, the Daviess County Board of Education caused an action to be instituted against Jones which charged violation of the Kentucky Revised Statutes. Jones entered his children in a private school and subsequently on September 29, 1969 he was arrested and incarcerated in the Daviess County Jail and sentenced to serve 30 days. Upon filing for a Writ of Habeas Corpus, Jones was released from the Jail and instituted this action to recover his attorney fee and for damages for his wrongful imprisonment. The Board of Education of Daviess County, Kentucky made a motion to dismiss the action and as grounds for said motion claimed sovereign immunity from suit. This motion was sustained and Floyd Jones appealed to the Court of Appeals of Kentucky who affirmed the lower Court's dismissal of the action.

ARGUMENT

The Board of Education of Daviess County, Kentucky acted in excess of their authority in having Floyd Jones incarcerated for an alleged offense which

by Statute was limited to ten dollars fine maximum for the first offense and no more than a twenty dollars fine for each subsequent offense. Floyd Jones was not in violation of these offenses.

The incarceration of Jones for violation of a law which only provided for a ten dollar fine violated his rights to due process and resulted in Jones expending his money for attorney fees to obtain his release. The necessity of spending his money for attorney fees to obtain his freedom further deprived Jones of his property without due process. Jones sought in his action to recover for his losses brought about by the Daviess County Board of Education only to have the Courts of Kentucky rule that a Board of Education is absolutely immune to suit. The question of Sovereign Immunity of Education Institutions has been ruled upon by our Federal Courts but these rulings have not been followed by the Kentucky Court of Appeals. The acts of the Daviess County Board of Education against Floyd Jones were in excess of the Board's authority and illegal. Such acts are *ultra-virics* and the Doctrine of Sovereign Immunity should no longer apply. (*Rodriguez v. Swauk*, 318 F. Supp. 289; *Kerr v. Raney*, 305 F. Supp. 1152.)

Floyd Jones's dilemma is similar to the situation presented in the case of H. Brent Davis against The Board of Trustees of Arkansas A & M College in which Davis claimed a Breach of Contract. Davis was allowed recovery although Arkansas claimed Sovereign Immunity. In this case the Federal Court of Appeals stated that such *ultra-virics* acts as summarily firing Davis removed the cloak of Sovereign Immunity. (*Board of Trustees of Arkansas A & M College, et al v. H. Brent Davis*, 393 U.S. 962; 89 Supreme Court 401; Facts and

opinions cited in 270 F. Supp. 528; 396 F.2d 730.) The Petitioner submits that if *ultra-viries* acts dealing with Contracts remove the protection of Sovereign Immunity then surely the illegal incarceration of a person by a government agency would likewise be *ultra-viries* and would likewise permit this person redress against the agency for the damages caused him.

CONCLUSION

The Petitioner respectfully requests the Supreme Court of the United States to protect his constitutional rights to liberty and due process and to allow his Writ of Certiorari.

Respectfully Submitted,

William L. Wiesman
422 Frederica Street
Owensboro, Kentucky 42301

Attorney for Petitioner

INDEX TO APPENDIX

APPENDIX I	PETITIONER'S COMPLAINT	8
APPENDIX II	MOTION TO DISMISS	13
APPENDIX III	ORDER DISMISSING COMPLAINT	15
APPENDIX IV	BRIEF FOR APPELLANT	17
APPENDIX V	APPLELLANT'S PETITION FOR RE-HEARING	23
APPENDIX VI	OPINION OF THE COURT OF APPEALS OF KENTUCKY	25
APPENDIX VII	KRS 159.010	29
APPENDIX VIII	KRS 159.180	29
APPENDIX IX	KRS 159.990 Paragraph I	30

APPENDIX I

COMMONWEALTH OF KENTUCKY
DAVIESS CIRCUIT COURT

DIVISION I

COMPLAINT NO. 1191

FLOYD JONES . . . . . *Plaintiff*

vs.

BOARD OF EDUCATION OF DAVIESS COUNTY, KENTUCKY . . . . . *Defendant*

Comes now the Plaintiff, Floyd Jones, and for his cause of action states as follows:

I

That he is the father of Alex Jones, age 6, and Jeff Richard Jones, age 8, that he resides in Daviess County, Kentucky, on Short Station Road.

II

That Jeff Richard Jones, his son, attended Philpot school for the past two (2) years and that Alex Jones is of legal age to attend school for the first year.

III

That he attempted on August 28, 1969, to register his children in the Philpot Elementary school and that said registration was refused by R. E. Chapman, principal of Philpot Elementary school at the direction of the Board of Education of Daviess County, Kentucky.

IV

That he has continued to insist upon the registration of his two (2) named children in the Philpot school numerous times and that he was given a written statement from R. E. Chapman, principal, Philpot Elementary School, on September 15, 1969, which stated that Mr. Chapman was not permitted to enroll Alex and Jeff Jones in Philpot school.

V

That the Daviess County Board of Education informed him on or about August 26, 1969, that Alex Jones and Jeff Jones were transferred to the Whitesville Elementary School.

VI

That the Daviess County Board of Education caused an action to be instituted against him in the Daviess County Juvenile Court and that such action has been illegally instituted and that said Court exceeded its jurisdiction and entered void orders for his arrest and that he was incarcerated under these void orders, said orders growing out of charges made against him on September 23, 1969, by the Daviess County Quarterly Court acting as Juvenile Judge, a copy of the summons to said court of which is attached hereto and made a part hereof. That the charge contained in said summons was failing to enter children in school this year and further that said charge is specifically set forth in K.R.S. 159.010 and that the procedure for enforcing this violation is further set out in K.R.S. 159.180 which requires "Before any proceedings are instituted against the parent, guardian, or custodian for violation of 159.010 to 159.170 a written notice of the viola-

tion shall be served on the person by the director of pupil personnel***." That no notice was ever received by the Plaintiff until the attached summons was left at the residence of his sister-in-law and that the Court further ordered his arrest and incarceration for thirty (30) days for this violation or some other illegal reason unknown to Plaintiff wherein the statutory penalty for said violation is expressly covered by K.R.S. 159.990, paragraph 1, which states that "any parent, guardian or custodian who willfully fails to comply with the requirement of K.R.S. 159.010 to 159.170 shall be fined not more than $10.00 for the first offense and not more than $20.00 for each subsequent offense."

VII

As a result of the illegal action by the Board of Education of Daviess County, Kentucky, as set out in paragraph VI above, the Plaintiff was on September 29, 1969, wrongfully and without probable cause arrested and incarcerated in the Daviess County jail and was caused to expend the sum of Three Hundred ($300.00) Dollars for attorney fees to obtain his release.

VIII

The Plaintiff was further exposed to unfavorable publicity relating to his arrest and incarceration, contained in the Owensboro Messenger and Inquirer paper on Tuesday morning, September 30, 1969, and that as a result he has suffered injury to his good name and credit among his friends and fellow townsmen and has suffered greatly in body and mind by reason of the disgrace and humiliation of said arrest and imprisonment in the amount of One Hundred Thousand Dollars ($100,000.00).

WHEREFORE, Floyd Jones prays for judgment

against the Defendant in the sum of One Hundred Thousand and Three Hundred Dollars ($100,300.00), and for all cost expended and interest and further for trial by jury.

This the 4th day of October, 1969.

WILLIAM L. WIESMAN
203 Masonic Building
Owensboro, Kentucky 42301

Attorney for Plaintiff

The Commonwealth of Kentucky,

Daviess Quarterly Court.

TO THE SHERIFF OR ANY CONSTABLE OF DAVIESS COUNTY:

You are commanded to summon Mr. Floyd Jones, Route 2, Philpot, Kentucky to appear before me on the 23rd day of September, 1969 to answer the charge of Failing to enter children in school this year. Children's Names: Jeff Richard Jones 1-19-61, Alex Damon Jones 5-28-63, committed in Daviess County, on or about August 29th to the 22 day of September, 1969; and have then and there this writ, with due return how you executed it.

Given under my hand, as Judge of the Court aforesaid, this 22nd day of September, 1969.

Pat Tanner, J.D.Q.C.

By Charmaine Baird, Clerk

APPENDIX II

COMMONWEALTH OF KENTUCKY
DAVIESS CIRCUIT COURT

DIVISION I

Civil Action No. 11911

FLOYD JONES ..... *Plaintiff*

vs.

BOARD OF EDUCATION OF
DAVIESS COUNTY, KENTUCKY ..... *Defendant*

MOTION TO AMEND

The defendant, Board of Education of Daviess County, Kentucky, moves to dismiss the complaint herein for failure to state a claim upon which relief can be granted against this defendant. CR 12.02.

As grounds for the said motion, the defendant states that it has **sovereign immunity from suit**. *Wallace v. Laurel County Board of Education*, 287 Ky. 454, 153 SW 2d 915 (1951), *Wood v. Board of Education of Danville, Kentucky*, 412 SW 2d 877 (Ky. 1967), *Cullinan v. Jefferson County and Jefferson County Board of Education*, 418 SW 2d 407 (Ky. 196

Neither judicial termination of sovereign immunity of cities (*City of Lexington v. Yank*, 431 SW 2d 892, Ky. 1968) nor statutory waiver of sovereign immunity of the Commonwealth in breach of contract suits nor the abolition of the distinction between proprietary and governmental functions (*City of Louisville v. Louis-*

ville Seed Company, 433 SW 2d 638, Ky. 1968, limits the **doctrine of sovereign immunity** from suits applicable to counties and to boards of education. See *City of Lexington v. Yank*, 431 SW 2d 892 (Ky. 1968); *Cullinan v. Jefferson County*, supra; *Carr v. Wright*, 423 SW 2d 521 (Ky. 1967).

WHEREFORE, defendant prays the judgment of the Court on this motion.

SANDIDGE, HOLBROOK,
CRAIG & HAGER
By Morton Holbrook
100 St. Ann Street
Owensboro, Kentucky 42301

Attorneys for the Defendant

NOTICE

The foregoing motion will be brought on for hearing before the Daviess Circuit Court, Division I, Daviess County Courthouse, Owensboro, Kentucky, on Friday, November 7, 1969, at 9:30 A.M. CST.

Morton Holbrook

CERTIFICATE OF SERVICE

I have mailed a copy of the foregoing Motion to William L. Wiesman, Esquire, 203 Masonic Building, Owensboro, Kentucky 42301, on this the 20th day of October, 1969.

Morton Holbrook

APPENDIX III

COMMONWEALTH OF KENTUCKY
DAVIESS CIRCUIT COURT

DIVISION I

Civil Action No. 11911

FLOYD JONES ..... *Plaintiff*

vs.

BOARD OF EDUCATION OF
DAVIESS COUNTY, KENTUCKY ..... *Defendant*

ORDER

This cause coming on for hearing on the defendant's motion to dismiss for failure to state a claim upon which relief can be granted and the plaintiff having moved to amend his complaint,

NOW, THEREFORE, BE IT ORDERED AND ADJUDGED as follows:

1) Plaintiff's motion to amend is to be marked "Tendered."

2) Defendant's motion to dismiss for failure to state a claim upon which relief can be granted is sustained, to which the plaintiff objects.

Dated this 7th day of November, 1969.

Henry M. Griffin, Judge
Daviess Circuit Court, Division I

Have Seen and Notice
of Entry Waived:

William L. Weisman

Attorney for Plaintiff

Sandidge, Holbrook, Craig & Hager
By Morton Holbrook
Morton Holbrook

Attorneys for Defendant

APPENDIX IV

STATEMENT OF QUESTIONS PRESENTED

Whether the trial court erred in dismissing plaintiff's complaint for failure to state claim upon which relief can be granted.

COURT OF APPEALS OF KENTUCKY

FILE NO. F-278-69

FLOYD JONES — *Appellant*

vs.

BOARD OF EDUCATION OF DAVIESS COUNTY, KENTUCKY. — *Appellee*

BRIEF FOR APPELLANT

May It Please The Court:

STATEMENT OF THE CASE

The appellant, Floyd Jones, is the father of two children living in Daviess County, Kentucky. Mr. Jones, when a child, and his older son, Jeff Jones, age eight, had attended Philpot Elementary School. The Daviess County Board of Education altered the attendance

district lines and directed Mr. Jones' children to attend the Whitesville School. Several other children, neighbors of the Appellant, continued to attend the Philpot School and Appellant persisted that his children should be allowed to attend the Philpot School. All of the childres described above, live in the Whitesville School Attendance District. Mr. Jones refused to enroll his children in the Whitesville School but persistently attempted to enroll his children in the Philpot Elementary School.

On or about September 22, 1969, the Appellant's sister received a "Summons on Misdemeanor" a copy of which is attached to the Complaint.

On September 23, the Appellant stopped by the courthouse in Daviess County, Kentucky, to inquire as to what was going on. At that time, he was instructed that failure to enroll his children in the Whitesville School would result in his incarceration for thirty days. The Appellant was aware of KRS 159 et Sub, providing for a $10.00 maxamum fine for failure to enroll children in school and requiring a written notice before instituting further proceedings. On September 29, while Appellant's children were enrolled in Longfellow Elementary School, Owensboro, Kentucky, the Defendant caused the Appellant to be arrested and incarcerated in the Daveiss County Jail. After Appellant filed his petition for habeas corpus in Daviess Circuit Court, Division II, he was released from the Daviess County Jail.

He subsequently filed the present action against the Daviess County Board of Education on October 4, 1969, and on the Defendant's motion to dismiss based on the doctrine of sovereign immunity, the Daviess Circuit Court, Division I, dismissed the Complaint. (See transcript of record.)

ARGUMENT

SOVEREIGN IMMUNITY DOES NOT APPLY TO CASES OF FALSE IMPRISONMENT.

In this case the court is squarely faced with the proposition of Sovereign Immunity vs. the State and Federal Constitutional guarantees and inalienable rights of persons to be secure from illegal imprisonment. The very basis of Sovereign Immunity is in direct contradiction of the way of life in these United States, and the Commonwealth of Kentucky. The basis of Sovereign Immunity that "the king can do no wrong" rains down upon the heads of each of us, who reside in this country which had as its very basis escaping the "crown authority." (*The Legal Liabilities of Cities and Schools for Injuries in Recreation and Parks*, by Van Der Smissen; page 3)

The basis of our very government is structured from the individual person, and as our constitution says, "We the people of the Commonwealth of Kentucky, do ordain and establish this Constitution," provides us as a government of the people, not of the crown. As a government of the people, each and every individual in our state is entitled to be treated according to the laws of the State, enacted by the legislature. It is beyond my comprehension that my failure in some misdemeanor which carried a $10.00 fine as the maximum penalty could result in my imprisonment for even an hour, much less thirty days. Were we residents of Cuba, one might expect to be imprisoned by governmental authority in excess of the law. But, what redress have we in this country when, under the guise of government authority, we are falsely imprisoned.

This court in the *City of Lexington vs. Yank*, Ky.

431 SW 2d 89, and *City of Louisville vs. Louisville Seed Company*, 433 SW 2d 638, recognized what Justice Holmes said in 1907, that sovereign immunity is exempt from suit, not because of a formal concept of an obsolete theory but on the logical and practical ground that there can be no right against the authority that makes the law on which the right depends. *Kawananakoa vs. Polyblank*, 205 US 349. This court proceeded apparently on the theory that the authority which makes the law is not the city or state, but the public in general, and when the public in general is exposed to a danger, as the *City of Louisville vs. Louisville Seed Company*, where the flood water came against the entire populace, no action would lie, but where the wrath of the government, as in *City of Lexington vs. Yank*, falls upon the head of an individual, then that government must pay. Slowly, we in Kentucky have come to recognize that government is big business, and as such, is liable to the individuals injured by their business and such individuals may seek redress.

If the Daviess County Board of Education had sought to imprison not Mr. Jones, individually, but all those whose children refused to attend the Whitesville School including those who, for some reason, were allowed to attend Philpot School, then this would be a matter of the general public, but even then: I think the court would not hold that an arm of our government may exceed the authority of its statutes which provide the maximum $10.00 fine, and throw individuals into jail without paying redress.

It it understandable that school boards in general, being owners of large properties, would be excluded from the negligence action for failing to check each

and every sidewalk before the PTA Chili Supper so that they would not be liable as an ordinary individual property owner. And even there, the liability would be questioned. But, the gross wantoness of flaunting due process and the written law to the dertiment of an individual must be reckoned with head on, and the court must decide: Can an administrative body or arm of the government proceed to imprison individuals throughout the state in excess of authority and without justification, or must the arm of the government be reckoned with in dollars and cents; something the controlling powers understand, be they administrative heads or elected officials. The question crosses my mind as to what redress would be available for one whose home was pilfered in the night and whose money was taken for use by the public authorities, be it police force, school board or orphan's home. Would the court say you cannot sue the police force, school board or orphan's home and recover your money, because they are immuned, that they are a sovereign? I think not. And, by the same token, I think that in such a case where Mr. Jones, the Appelkant, was bodily taken, that he is entitled to redress from the public authority. We should not turn loose upon the public greater risks of individual violations by governmental authority, and then protect the violator with the cry of "Sovereign Immunity."

CONCLUSION

The idea of Sovereign Immunity is antagonistic and incompatible with freedom in cases of false imprisonment. The doctrine of *City of Lexington vs. Yauk*, ibid, should continue to be followed in this case, and the case reversed for further proceedings.

Respectfully submitted,

WILLIAM L. WIESMAN
Box 314
Owensboro, Kentucky 42301
Attorney for Appellant

APPENDIX V

In The

COURT OF APPEALS OF KENTUCKY

No. F-278-69

FLOYD JONES ..... *Appellant*

vs.

BOARD OF EDUCATION OF
DAVIESS COUNTY, KENTUCKY ..... *Appellee*

Appeal from Daviess Circuit Court
Hon. Henry M. Griffin, Presiding

PETITION FOR REHEARING

STATEMENT TO THE COURT

May it please the Court, on this Petition for Rehearing, Mr. Jones calls these pertinent facts to the Court's attention.

That his children were not allowed to enroll in the Philpot school; that the School Board failed to issue a written warning or to serve him according to Law and he was charged with failing to enter his children in school, the penality being a maximum $10.00 fine and; after Jones had enrolled his children in another school, he was arrested on a warrant for contempt of Quarterly Court.

ARGUMENT

There are two recent cases which have been handed down since the filing of Jones's action which Jones

respectfully requests the Court to consider in his Petition for Rehearing.

In the case of *Rodriguez vs. Swank*, 318 Fed. Sup. page 289, the Illinois State Court was faced with the defense of sovereign immunity in an action against the Director of Public Aid for the State of Illinois. The Court in that case stated that immunity granted under Illinois constitution that that state shall never be made defendant in any court of law or equity, does not extend to state officer when he is enforcing an unconstitutional statute or is proceeding in violation of law. Inasmuch, the 14th Amendment of the United States Constitution declares that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor **shall any state deprive any person of life, liberty, or property without due process of law**." Mr. Jones should be entitled to an action against the School Board notwithstanding sovereign immunity inasmuch as the School Board has acted outside of its constitutional rights, and in so doing, has waived its sovereign immunity.

The Alaska courts were faced with a similar situation in the case of *Ethcvedge vs. Bradley*, 480 P. 2d. page 414, where again, the government official was acting beyond the scope of constitutional rights and, in contesting the constitutionality of the statutes, the Court there stated that sovereign immunity does not apply to actions which are unconstitutional, since an officer acting unconstitutionally is not acting by authority of the State.

William L. Wiesman
Box 314
Owensboro, Kentucky 42301
Attorney for Appellant

APPENDIX VI

RENDERED: May 28, 1971

COURT OF APPEALS OF KENTUCKY

FLOYD JONES — *Appellant*

-vs.-

BOARD OF EDUCATION OF DAVIESS COUNTY, KENTUCKY — *Appellee*

Appeal From Daviess Circuit Court
Hon. Henry M. Griffin, Judge

OPINION OF THE COURT BY
JUDGE STEINFELD

AFFIRMING

Floyd Jones, appellant, attempted to register his children in the Philpot Elementary School but they were rejected because the school district lines had been altered and they no longer lived in that district. When the children were not enrolled in the proper school the Daviess County School Board, appellee, instituted an action against Jones in juvenile court pursuant to KRS 159.010 for his failure to enter his children in school. **Finding him guilty, that court sentenced Jones to confinement in the Daviess County jail for thirty days. Promptly Jones filed a petition for writ of habeas corpus and was released.** Jones then filed a damage suit against the school board alleging that its action against him in the juvenile court was illegal, the re-

sults of which were his arrest, incarceration and humiliation. The suit was dismissed on the ground of sovereign immunity. We affirm.

Conceding that the sovereign immunity rule has not been abrogated as to boards of education appellant urges us to apply the same rule now applicable to municipal corporations. See *City of Lexington v. Yank*, Ky., 431 S. W. 2d 892 (1968); *City of Louisville v. Louisville Seed Company*, Ky., 433 S.W. 2d 638 (1968) and *Haney v. City of Lexington*, Ky., 386 S. W. 2d 738, 10 A.L.R. 3d 1362 (1964). Sovereign immunity of school boards for tort was reviewed in *Copley v. Board of Education of Hopkins County*, Ky., __ S. W. 2d __ (1971), where we said:

> "The appellants urge the court to renounce the doctrine of sovereign immunity as to school boards, citing the decisions of several other jurisdictions which have done so. Appelants concede that the decision in *Cullinan v. Jefferson County*, Ky., 418 S. W. 2d 407, required the trial court's decision as related to the Board of Education of Hopkins County, but entreat the court to overrule that case and abandon the doctrine of sovereign immunity as to school boards. A majority of the court, as presently constituted, is not persuaded that the rule announced in Cullinan should be abrogated. The trial court correctly dismissed the complaint to the extent that recovery was sought against the Board of Education of Hopkins County."

Our view has not changed.

The judgment is affirmed.

All concur.

Attorney for Appellant:

WILLIAM L. WIESMAN
P. O. Box 314
Owensboro, Kentucky 42301

Attorney for Appellee:

MORTON HOLBROOK
SANDIDGE, HOLBROOK, CRAIG & HAGER
100 St. Ann Street
Owensboro, Kentucky 42301

MANDATE

THE COMMONWEALTH OF KENTUCKY,

THE COURT OF APPEALS

Spring Term — May 28, 1971

Floyd Jones

VS.

Board of Education of Daviess County, Kentucky

Appeal from a judgment of the Daviess Circuit Court

The Court being sufficiently advised, it seems there is no error in the judgment herein.

It is therefore considered that said judgment be affirmed; which is ordered to be certified to said court.

It is further considered that the appellee recover of the appellant its cost herein expended.

DICK VERMILLION, C. C. A.

By John C. Scott, D. C.

A copy — Attest:

Issued October 15, 1971

APPENDIX VII

KRS 159.010

1 — The Department of Education shall consist of the State Board of Education and the Superintendent of Public Instruction, who shall be the head of the department.

2 — The Department of Education shall exercise all the Administrative functions of the State in relation to the management and control of the public common schools, of vocational education and rehabilitation of West Kentucky Vocational School, the Kentucky School of the Blind, and the Kentucky School for the Deaf, and may exercise certain powers and functions relating to Area Vocation Schools, and relating to television in aid of education and other proper public functions, as provided in KRS 156.070.

3 — The Kentucky School for the Deaf Advisory Board and the State Advisory Textbook Commission are included in the Department of Education and constitute divisions thereof, but each shall continue to exercise all the functions conferred upon it by law.

APPENDIX VIII

KRS 156.180

The Superintendent of Public Instruction may attend educational associations, conventions and conferences within or without the State for the purpose of keeping informed upon and familiar with progressive educational policies and practices. When thus engaged his traveling expenses shall be paid, but his total ex-

penses for that purpose shall not exceed fifteen hundred dollars in any one year.

APPENDIX IX

KRS 159.990

"1 — Any parent, guardian or custodian who willfully fails to comply with the requirements of KRS 159.010 to 159.170 shall be fined not more than ten dollars for the first offense, and not more than twenty dollars for each subsequent offense. The Court trying the case may suspend enforcement of the fine if the child is immediately placed in attendance at a school, and may finally remit the fine if the attendance continues regularly for the full school term. School attendance may be proved by an attested certificate of the principal or teacher in charge of the school.